

**LODI CITY COUNCIL  
REGULAR CITY COUNCIL MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, FEBRUARY 16, 2005**

C-1     CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of February 16, 2005, was called to order by Mayor Beckman at 5:00 p.m.

Present: Council Members – Hansen (arrived at 5:08 p.m.), Hitchcock (arrived at 5:05 p.m.),  
Johnson, Mounce, and Mayor Beckman

Absent: Council Members – None

Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Blackston

C-2     ANNOUNCEMENT OF CLOSED SESSION

- a) Actual Litigation: Government Code §54956.9(a); one case; Rogers v. City of Lodi et al., U.S. District Court, Eastern District, Case No. CIV. S-02-1961 DFL JFM
- b) Actual litigation: Government Code §54956.9(a); one case; People of the State of California; and the City of Lodi, California v. M & P Investments, et al.; United States District Court, Eastern District of California, Case No. CIV-S-00-2441 FCD JFM
- c) Actual litigation: Government Code §54956.9(a); one case; Hartford Accident and Indemnity Company, et al. v. City of Lodi, et al., Superior Court, County of San Francisco, Case No. 323658
- d) Conference with legal counsel – initiation of litigation: Government Code §54956.9(c); two cases
- e) Conference with legal counsel – anticipated litigation – significant exposure to litigation pursuant to subdivision (b) of Section 54956.9; one case; pursuant to Government Code §54956.9(b)(3)(A) facts, due to not being known to potential plaintiffs, shall not be disclosed
- f) Actual litigation: Government Code §54956.9(a); one case; City of Lodi, a California Municipal Corporation, and Lodi Financing Corporation, a California nonprofit corporation v. Lehman Brothers, Inc. and US Bank National Association, United States District Court, Eastern District of California, Case No. CIV. S-04-0606 MCE-KJM
- g) Actual litigation: Government Code §54956.9(a); one case; Lehman Brothers Inc., v. City of Lodi and Lodi Financing Corporation, United States District Court, Eastern District of California Case No. CIV-S-04-0850 FCD/JFM
- h) Actual litigation: Government Code §54956.9(a); one case; Fireman's Fund Insurance Company v. City of Lodi, et al., United States District Court, Eastern District of California Case No. CIV-S-98-1489 FCD JFM
- i) Actual Litigation: Government Code §54956.9(a); one case; Environmental Forensic Investigations, Inc., v. City of Lodi, San Joaquin County Superior Court, Case No. CV-024899
- j) Actual Litigation: Government Code §54956.9(a); one case; Farr Associates v. City of Lodi, San Joaquin County Superior Court, Case No. CV-025075
- k) Actual Litigation: Government Code §54956.9(a); one case; Magellan Environmental, Inc., v. City of Lodi, San Joaquin County Superior Court, Case No. CV-024898
- l) Actual Litigation: Government Code §54956.9(a); one case; City of Lodi v. City of Stockton, et al., San Joaquin County Superior Court, Stockton Branch, Case No. CV024720
- m) Actual Litigation: Government Code §54956.9(a); one case; City of Stockton v. City of Lodi, San Joaquin County Superior Court, Stockton Branch, Case No. CV024859
- n) Actual Litigation: Government Code §54956.9(a); one case; Stockton Family Farmers Coalition v. City of Lodi, et al., San Joaquin County Superior Court, Stockton Branch, Case No. CV024860

C-3 ADJOURN TO CLOSED SESSION

At 5:00 p.m., Mayor Beckman adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 6:45 p.m.

C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:02 p.m., Mayor Beckman reconvened the City Council meeting, and City Attorney Schwabauer disclosed the following actions.

In regard to Items C-2 (a), (i), (j), (k), (l), (m), and (n), settlement direction was requested and received. All other items were discussion only.

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of February 16, 2005, was called to order by Mayor Beckman at 7:02 p.m.

Present: Council Members – Hansen, Hitchcock, Johnson, Mounce, and Mayor Beckman

Absent: Council Members – None

Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Blackston

B. INVOCATION

The invocation was given by Pastor Dave Garner, Grace Community Fellowship.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Beckman.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 Awards – None

D-2 (a) Mayor Beckman presented a proclamation to Carrie Anderson, representing Animal Friends Connection, proclaiming the month of February 2005 as "Prevent a Litter Month" in the City of Lodi.

D-3 (a) Mayor Beckman presented a Certificate of Recognition to Ed Wall for his 2004 Parks and Recreation Commission Chairmanship.

D-3 (b) Gabi DelCastillo and Elisa Villarreal, members of the Greater Lodi Area Youth Commission, acknowledged the Teen of the Month, Lauren Doucette from Lodi High School, and provided an update on the activities and accomplishments of the Commission.

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E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Council Member Johnson, Beckman second, unanimously approved the following items hereinafter set forth:

E-1 Claims were approved in the amount of \$7,620,389.59.

E-2 The minutes of January 19, 2005 (Regular Meeting), January 25, 2005 (Shirtsleeve Session), January 25, 2005 (Special Meeting), January 31, 2005 (Special Meeting), February 1, 2005 (Shirtsleeve Session), February 1, 2005 (Special Meeting), February 8, 2005 (Shirtsleeve Session), and February 8, 2005 (Special Meeting) were approved as written.

- E-3 Adopted Resolution No. 2005-27 approving the plans and specifications and authorizing advertisement for bids for Pine Street Overlay Project – Ham Lane to Church Street; authorizing the City Manager to award or reject the contract up to \$260,000; and appropriating funds.
  - E-4 Adopted Resolution No. 2005-28 awarding the purchase of 54 wood utility poles to the low bidder, North Pacific Lumber, of Portland, Oregon, in the amount of \$43,056.90.
  - E-5 Adopted Resolution No. 2005-29 accepting the Harney Lane street frontage improvements in Century Meadows Two, Unit 4, Tract No. 3272, and appropriating funds in the amount of \$57,990 for the applicable reimbursements.
  - E-6 Adopted Resolution No. 2005-30 accepting the improvements in Legacy Estates, Unit 1, Tract No. 3260.
  - E-7 Adopted Resolution No. 2005-31 of Vacation of five-foot public utility easement at 1451 South Mills Avenue.
  - E-8 Received for information the Water and Wastewater Main Replacement Program – Project No. 2 Contract Change Order.
  - E-9 Adopted Resolution No. 2005-32 authorizing the City Manager to execute a professional services agreement with ATEEM Electrical Engineers, Inc., of Sacramento, for a Supervisory Control and Data Acquisition system at the White Slough Water Pollution Control Facility in the amount of \$310,000.
  - E-10 Adopted Resolution No. 2005-33 affirming the agreement with Liebert, Cassidy, Whitmore for legal services; authorizing the payment of outstanding bills incurred by the City for services rendered by Liebert, Cassidy, Whitmore; and appropriating funds in the amount of \$12,979 to the City Attorney's budget for the past bills and prospectively for anticipated services.
- Council Member Mounce expressed appreciation to the City Manager for having corrected and brought this matter before Council.
- E-11 Adopted Resolution No. 2005-34 approving the employee assistance program agreement with the Employee Assistance Program of San Joaquin (Options) for the period of March 1, 2005 through February 28, 2007, in the annual amount of \$11,280.
  - E-12 Adopted Resolution No. 2005-35 authorizing the City Manager to enter into a professional services agreement with Power Engineers, Inc., of Hailey, ID, for oil Spill Prevention, Control, and Countermeasure (SPCC) evaluation and development of SPCC plans for Henning, Industrial, Killelea, and McLane Substations and the service yard; and appropriating funds in the amount not to exceed \$12,000 by a transfer from Distribution System Improvement business to the business unit.
  - E-13 Report on the City's Supervisory Control and Data Acquisition system located at Electric Utility that monitors and controls the electric, water, wastewater, and storm systems and affirmation of the City Manager's action regarding necessary emergency repairs in the amount of \$8,000.

- E-14 Approved the expenses incurred by outside counsel/consultants relative to the Environmental Abatement Program litigation and other various cases being handled by outside counsel in the amount of \$27,268.87 and approved the Special Allocation covering general litigation matter expenses in the amount of \$5,808.42, as detailed below:

<b>Kronick, Moskovitz, Tiedemann &amp; Girard</b>			
Matter No./Description	Coverage Period	Invoice No.	Amount
11233.021 On-site Litigation Support (Docket Clerk)	Through 10/25/04	216545	\$ 1,691.01
11233.021 On-site Litigation Support (Docket Clerk)	Through 12/25/04	217455	\$ 1,600.00
11233.021 On-site Litigation Support (Docket Clerk)	Through 01/25/05	218171	\$ 1,600.00
11233.001 General Advice	Through 12/25/04	217456	\$ 67.50*
11233.003 Lehman Brothers, Inc.	Through 12/25/04	217456	\$ 15.00
11233.009 Rogers v. County of San Joaquin, et al.	Through 12/25/04	217456	\$ 401.32*
11233.010 Phelps v. City of Lodi et al.	Through 12/25/04	217456	\$ 1,370.23*
11233.016 Hartford Litigation	Through 12/25/04	217456	\$ 47.48
11233.017 M&P Investments	Through 12/25/04	217456	\$ 225.80
11233.023 City of Lodi v. City of Stockton	Through 12/25/04	217456	\$ 1,857.69
			\$ 3,985.02
11233.001 General Advice	Through 01/25/05	218172	\$ 943.00*
11233.004 Envision Law Firm	Through 01/25/05	218172	\$ 174.50
11233.009 Rogers v. County of San Joaquin, et al.	Through 01/25/05	218172	\$ 1,304.22*
11233.010 Phelps v. City of Lodi et al.	Through 01/25/05	218172	\$ 1,722.15*
11233.023 City of Lodi v. City of Stockton	Through 01/25/05	218172	\$ 418.80
11233.024 Stockton Family Farmers Coalition	Through 01/25/05	218172	\$ 288.60
11233.025 City of Stockton v. City of Lodi	Through 01/25/05	218172	\$ 364.30
			\$ 5,215.57

\* Requires Special Allocation for payment from General Fund.

JAMS

Invoice #0000948677-110 Mediation Services (M&P Investments) \$ 12,146.02  
For period 1/12/05 – 1/31/05

Invoice #0000948753-100 Mediation Services (Lehman) \$ 1,031.25  
For period 01/26/05 \$ 13,177.27

GRAND TOTAL OF ALL INVOICES \$ 27,268.87

- E-15 Adopted Resolution No. 2005-36 approving the proposed amendments to the bylaws for the Eastside Improvement Committee, including its name change to the Lodi Improvement Committee.

Council Member Mounce recalled that the Eastside Improvement Committee had considered a name change for many years. Ms. Mounce was in favor of the change to *Lodi Improvement Committee*, as she felt it would help heal the “east” and “west” side perceptions and give the Committee the opportunity to address crime, drugs, and blight, which exists throughout the City.

- E-16 Set public hearing for March 2, 2005, to consider resolution approving new rates for solid waste collection.
- E-17 Set public hearing for March 2, 2005, to consider and approve community input and proposals for uses of the City’s 2005-06 Federal allocation of Community Development Block Grant (CDBG) and HOME Program funds and the reallocation of available funds from previous program years.

Council Member Johnson noted that he recently read in the newspaper that the Federal budget may severely decrease CDBG funds. He asked what would happen to people who may apply for these funds and then subsequently be impacted.

Community Development Director Bartlam acknowledged that the President's proposal is to consolidate and reduce funding for the Block Grant program. It is staff's opinion that the process currently in place should continue with the assumption that it will receive its full funding. He pointed out that it is funding for Federal fiscal year 2005-06 that begins in October. Staff has notified all applicants that there may be a change in the future. Mr. Bartlam noted that if a change in funding occurs, the matter will be brought back to Council.

- E-18 Set public hearing for March 16, 2005, to consider approving the Countywide Master Annexation Agreement with San Joaquin County and adoption of the County Facility Fee Program.
- E-19 Adopted Resolution No. 2005-37 declaring intention to amend Ordinance No. 1753, which establishes the Lodi Tourism Business Improvement District (LTBID) and method of levying and collecting assessments within the LTBID boundaries, and setting public hearing for March 16, 2005.

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F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Bill Crow thanked Council Member Hansen for his successful and tireless work on the Environmental Abatement Program litigation.
- Mark Chandler announced that the Parks and Recreation Commission unanimously supported the proposed Zinfest event that will include "Vintners Grille at the Lake" on May 13 and the "Zinfest Wine Festival" on May 14. "Zinfest Winery Open Houses" will take place on May 15.

G. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Council Member Mounce commented that there was a letter to the editor published recently regarding salary increases given by the former City Manager. She recalled that at the meeting of February 2, Council considered the possibility of changing the City Manager's authority to grant pay increases; however, it was decided it was not in the best interest of the City organization to do so. City Manager King has pledged to keep Council better informed, and Council has encouraged him to consider and bring forward any recommendations for improved policies that he develops. She noted that there have been no breaches of campaign promises, as was alluded to in the letter to the editor.
- Council Member Hansen thanked Mr. Crow for his comments. He acknowledged the contributions of the City Attorney and Mayor Pro Tempore Hitchcock in the Environmental Abatement matter and noted that all of the agreements have been with the consensus of the Council. He reported that he recently returned from the American Public Power Association (APPA) Legislative Rally in Washington D.C. Mr. Hansen commented that he is also a Commissioner for the Northern California Power Agency (NCPA) and serves on the Policy Makers Committee for APPA. He stated that Lodi is one of 13 agencies that pool resources in terms of generating electricity. He reported that 33% of all electric generation is from municipally-owned utilities. There was a 9<sup>th</sup> Circuit Court decision regarding the Trinity River Power Generation Plant, which will result in a \$6.9 million to \$9 million loss to NCPA members. It was decided to attempt to lobby for relief. While in Washington D.C., he met with Senator Feinstein, Senator Boxer, and Congressman Pombo. Congressman Pombo is the chairman of the House Resource Committee, under which is the Bureau of Reclamation. It was requested that Congressman Pombo speak to the Bureau of Reclamation on behalf of the APPA/NCPA members. Mr. Hansen suggested that a Shirtsleeve Session be scheduled to address this matter in more detail.

- Mayor Pro Tempore Hitchcock stated that she received an inquiry from a citizen in Lodi who was curious as to why certain companies that lie within the plumes of the groundwater contamination were not named in the lawsuit.

City Attorney Schwabauer replied that, before filing the amended complaint, counsel reviewed the report that identified most of the Potentially Responsible Parties (PRPs) for PCE/TCE contamination and named those entities. Some were not named because they were deceased or had no assets and others were dismissed because further investigation found that it was unlikely they had assets. All records used to determine who ought to be named are open to the public. In answer to additional questions posed by Ms. Hitchcock, Mr. Schwabauer explained that drilling was done for the purpose of establishing the location of the groundwater contamination and how to clean it up. PCE got into the groundwater through being directly applied, spilled, leaked through floors, etc. It was discharged into the City sewer, went downstream, and leaked through holes in the City sewer.

- In reference to Ms. Mounce's comments regarding the letter to the editor (which had implicated him as well), Council Member Johnson stated that he is entitled to his opinion and citizens are entitled to theirs. He is unaffected by minor criticism.

#### H. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

- City Manager King asked Council if there was concurrence to schedule a Shirtsleeve Session on the topic described by Council Member Hansen.

Mayor Beckman and Mayor Pro Tempore Hitchcock asked that the Shirtsleeve Session be scheduled in order of priority with other pending topics.

#### ACTION TO AMEND ORDER OF AGENDA

The City Council, on motion of Mayor Pro Tempore Hitchcock, Johnson second, unanimously moved Item J, "Communications," to follow Item H, "Comments by the City Manager on non-agenda items."

#### J. COMMUNICATIONS

J-1 Claims filed against the City of Lodi – None

J-2 The following postings/appointments were made:

- a) The City Council, on motion of Council Member Hitchcock, Johnson second, unanimously made the following appointments:

Lodi Arts Commission

Ben Burgess Term to expire July 1, 2006

Parks and Recreation Commission

Barbara Fox Term to expire December 31, 2006

Scott Davis Term to expire December 31, 2008

- b) The City Council, on motion of Council Member Hansen, Mounce second, unanimously made the following appointments:

San Joaquin Partnership

Bob Johnson, Delegate

John Beckman, Alternate

J-3 Miscellaneous – None

#### I. PUBLIC HEARINGS

NOTE: At 7:40 p.m., Mayor Beckman recused himself and left the dais.

- I-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Pro Tempore Hitchcock called for the continued public hearing to consider appeal filed on 12/13/04 by Timothy Cremin of the firm Steefel, Levitt & Weiss to the Planning Commission decision on 12/08/04 regarding two conditions: 1) Condition R of the use permit and tentative map approval resolution requiring signed leases for 50% of the existing Wal-Mart store before a building permit is issued for the new Supercenter and prohibits tenant restrictions; and 2) Condition EE requiring the project developer to fund the commercial linkage fee nexus study under Program 11 of the Housing Element and pay any adopted fees.

Community Development Director Bartlam recalled that Council's direction to staff at its special meeting on February 3 was to negotiate language that provided for more flexibility to the applicant of the project in finding occupants for the building or the land that the existing Wal-Mart building occupies. It is staff's perspective that language as outlined in the staff report (filed) retains the intent of the Planning Commission action and provides additional flexibility. Prior to the issuance of a building permit for the new Wal-Mart Supercenter, the applicant must either: A) provide the City with signed leases for at least 50% of the building's square footage; B) the owner of the building will have entered into a fully executed purchase agreement for building with a bona-fide retailer; or C) the applicant will present to the City a cash escrow account, which shall be for the purpose of securing the applicant's obligation to demolish the building not later than 90 days after the opening to the general public of the new Wal-Mart Supercenter. The City is asking for the amount of an estimate by a licensed contractor to demolish the building plus \$100,000 to be placed in an escrow account for the City's use should the applicant not perform.

Mr. Bartlam reported that condition EE dealt with the Planning Commission's desire to see the Housing Element Program 11 implemented as soon as possible. This project provided a direct nexus to the need for affordable housing. Staff suggests that the condition be modified to allow the reimbursement of any funds that exceed the amount that the study would suggest is their appropriate and fair share. The applicant in this case would pay for the entire study. The amount paid by the applicant for the study would be reimbursed out of program proceeds.

In reply to Mayor Pro Tempore Hitchcock, Mr. Bartlam explained that the bond process is more difficult for the City to utilize. It is staff's position that should the City have to exercise Option C by the inactivity of the applicant, it should be able to do so in as quick a manner as possible.

In response to Council Member Mounce, Mr. Bartlam explained that the 90 days indicated in Option C pertains to the completion of demolition. Staff chose that time period in an effort not to be too restrictive.

Darryl Browman, speaking on behalf of the appellant, felt that the amendments to the conditions both ensure that the project developer performs as promised and provides flexibility to re-tenant the existing building as promptly as possible with the best retailer. Mr. Browman stated that he was in agreement with staff's recommended amendments. In reference to Condition EE, he requested that from now on, for all future commercial projects, that they be subjected to the same requirement.

In reply to Council Member Hansen, Mr. Browman stated that he has 30 tenants whose survival depends on him re-tenanting the space of the existing Wal-Mart building. Mr. Browman stated that he was committed to buying the building.

Council Member Hansen emphasized to Mr. Browman that he needs to take the 90-day period in Option C very seriously.

Mayor Pro Tempore Hitchcock asked whether, under Option C the building could be demolished and not replaced, to which Mr. Bartlam replied in the affirmative and confirmed that there is no requirement to rebuild.

Council Member Hansen commented that there is a synergy that comes from development on all four corners of the intersection of Kettleman Lane and Lower Sacramento Road. He was confident the developer would not want to see that particular area less successful by not finding a tenant for the existing Wal-Mart building. He was in favor of providing the options as recommended by staff.

Mr. Browman stated that there would be no restrictions from Wal-Mart on re-tenanting the building. Wal-Mart will buy the property for the Supercenter site at the same time that Mr. Browman closes escrow on its existing building.

Hearing opened to the public for comments related to the appeal by Timothy Cremin of the firm Steefel, Levitt & Weiss to the Planning Commission decision on 12/08/04 regarding two conditions

- Treacy Elliott asked Council to follow the original recommendation made by the Planning Commission. He contended that the developer and Wal-Mart knew the exceptions previously, for which they are now requesting. They promised that the building would be filled before they built the Supercenter in an effort to entice citizens to vote in their favor against Measure R on the November 2004 ballot. If Council accepts the condition as proposed by the developer, the City has no guarantee that it would be rebuilt and occupied by a tenant that would generate desired retail sales tax. He asked Council not to let Wal-Mart and the developer dictate what the conditions should be and noted that 43% of the voters have already conceded enough.

Council Member Mounce disclosed that she met previously with Mr. Elliott and thanked him for his commitment to the City, for voicing his opinion, and giving citizens an opportunity to make a choice on this issue.

- Steve Herum, representing Lodi First, submitted documents (filed) and requested that they be made part of the record of proceedings of the hearing. He stated that it is the contention of Lodi First that the conditions are not strong enough. It allows the building not to be re-leased for retail purposes, which means that the "benefit of the bargain" has not been reached. He stated that at least two of the Wal-Mart mailers promised that the old building would be fully leased with retail tenants before the new building was occupied. The voters made their decisions based on these representations. He asked Council to make Wal-Mart live up to its commitments.
- Christopher Vigil expressed his opinion that rejecting the appeal is the minimum action required by Council. He felt that its existing retail space should be filled and noted that he had believed this when he voted. The attraction of having a Wal-Mart Supercenter in Lodi has been diminished because others have now been built nearby. He stated that the good character of the City is kept only through keeping its resolve fully intact.
- Ann Cerney stated that she was speaking on her own behalf as well as a member of Citizens for Open Government. She noted that her comments were in the overall context of the Environmental Impact Report (EIR) because the EIR certification is not complete until the project approval takes place. The main concern of Citizens for Open Government is that there be full compliance with the California Environmental Quality Act. She felt that conditions set by the City should not have been questioned by the developer or Wal-Mart. She stated that entering into any negotiations under these circumstances is a public endorsement of a private deal. Mr. Browman indicated that there would be an escrow where real property interest would change hands, implying there is an option. She reported that there is nothing recorded. She asked that her comments, Mr. Herum's remarks, and her attorney's submission to the City be incorporated as points and authorities.



- Joe Pacino asked Mr. Browman if he would allow any retail tenant or competitor of Wal-Mart to lease the old building. In addition, he asked if Mr. Browman would consider selling the property to the City if the building were demolished.

Council Member Johnson asked if there were a way to ensure the simultaneous purchase and sale as Mr. Browman stated would take place.

Mr. Browman replied that he would be in agreement to add a condition that Wal-Mart could not place any restrictions on the existing building. He also offered that City staff could accompany him to the Recorder's Office, or he could fax relevant documents to the City as evidence that the simultaneous purchase and sale was taking place. In answer to Mr. Pacino's inquiry, Mr. Browman stated that he would allow a competitor of Wal-Mart to lease the old building.

Mayor Pro Tempore Hitchcock voiced her concern that the building not only be re-tenanted, but also, if demolished, that a replacement building on the site be constructed. She suggested that a condition be added that Wal-Mart would sell the existing building to Browman Development and would put no restrictions or conditions on its resale or lease of the building.

Mr. Browman agreed with Ms. Hitchcock's suggestion. Addressing the City Attorney, he asked whether there was anything in the document submittal by Mr. Herum tonight that should be addressed.

City Attorney Schwabauer replied that the documents were related to the issue of cumulative impact analysis of other projects, e.g. when the two Wal-Mart Supercenter projects in Stockton were known and whether they should have been addressed in the EIR. He reported that there is case law that suggests the document submittal will become part of the record on the EIR.

Mr. Herum stated that there are a number of cases stating that a public agency must accept comments and arguments with respect to the environmental review until either the public is closed on the entire project or the notice of determination is filed. In the 2<sup>nd</sup> District Court of Appeals case involving Galente Vineyards, it indicated that comments could be received and have to be included in the record until the notice of determination is filed. In the 3<sup>d</sup> District Court case of *Central Delta v. County of San Joaquin*, it indicated that the public agency must receive comments and arguments concerning the environmental review until the public hearing on the project is closed. In *BCLC v. City of Bakersfield*, they certified the EIR and then they refused to accept any additional comments. In that case, the Court of Appeals criticized the city attorney for not allowing those comments and advising the council not to take it.

- Tim Cremin of the firm Steefel, Levitt & Weiss, representing Wal-Mart, objected to the submission of information on the EIR by Mr. Herum, as he believed it to be untimely. Addressing the issue of the sale by Wal-Mart to Browman Development, he cautioned Council in trying to write a condition that addresses private transactions between people. He explained that because it is a "simultaneous close," Wal-Mart will not sell to Browman Development unless it buys the Supercenter lot.

In answer to Mayor Pro Tempore Hitchcock, Mr. Cremin clarified that he did not think Mr. Herum's document submittal tonight was a proper part of the record for the certification of the EIR.

In response to Mr. Browman, City Attorney Schwabauer reported that the notice of determination on the EIR is not yet filed. Presumably, it would be filed tomorrow once the project is approved.

Hearing opened to the public for comments related to any issues with regard to the Lodi Shopping Center project (Wal-Mart Supercenter) in its totality with the Environmental Impact Report

- Joe Pacino asked again if Browman Development would accept a condition that the property could be sold to the City if the existing Wal-Mart building were demolished.

Mayor Pro Tempore Hitchcock answered that there was no interest expressed by the Council for such a condition. She explained that the City is not in the business of competing with commercial development.

- Ann Cerney asked to make certain that all of the documentation presented by herself, Lodi First, Citizens for Open Government, and their attorney be included in the record should this be a situation where there would be further action by an adjudicated body.

Public portion of hearing closed

In response to Mayor Pro Tempore Hitchcock, City Attorney Schwabauer offered the following language to be included in the conditions of the resolution: "Wal-Mart shall provide proof of sale of the existing Wal-Mart property located at 2350 West Kettleman Lane prior to the issuance of the building permit for the new Wal-Mart Supercenter without condition on the right of the purchaser to sell or tenant the existing Wal-Mart."

MOTION:

Council Member Hansen made a motion, Hitchcock second, to adopt the revised Resolution No. 2005-38 (modifying Conditions R and EE) approving Use Permit File No. U-02-12, to allow the construction of a commercial shopping center in the Commercial Shopping (C-S) zone and sale of alcoholic beverages at the Wal-Mart Supercenter, and tentative Parcel Map 03-P-001, to create 12 parcels for the project relating to the Lodi Shopping Center; and further adding Condition FF that Wal-Mart shall provide proof of sale, to a non Wal-Mart related entity, of the existing Wal-Mart property located at 2350 W. Kettleman Lane prior to the issuance of the building permit for the new Wal-Mart Supercenter without condition on the right of purchaser to lease or sell the existing Wal-Mart building.

DISCUSSION:

Council Member Hansen believed that the majority of consumers in Lodi want this project to proceed. They have had an opportunity to vote on whether or not there would be a restriction on the size of retail, and have rejected it. Council has heard and weighed the issues. He stated that this is a project that would allow Lodi to have some impact on the seepage of tax dollars going outside the City.

Mayor Pro Tempore Hitchcock stated that Council has done its best to ensure the intent of the Planning Commission to eliminate blight and to continue to maintain revenue. The revised resolution provides the flexibility for a new building to be constructed at the old Wal-Mart site, which may provide even more revenue and be a valuable resource to the citizens of Lodi.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Hansen, Hitchcock, Johnson, and Mounce

Noes: Council Members – None

Absent: Council Members – Mayor Beckman

*Continued February 16, 2005*

K. REGULAR CALENDAR

None.

L. ORDINANCES

None.

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 9:04 p.m., in memory of Police Partner, Joe Nitzky, who passed away on January 25.

ATTEST:

Susan J. Blackston  
City Clerk